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**IN THE COURT OF IJAZ MAHSOOD,**  
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No.	44/1 of 2023
Date of Institution:	01.11.2023
Date of Decision:	29.05.2025

1. Hafiz Naimat Ullah s/o Said Noor Shah
  2. Muhammad Ibrahim s/o Said Noor Shah
  3. Razeem Shah s/o of Gohar Shah
  4. Noor Saleem s/o of Gohar Shah
  5. Azeem Khan s/o of Gohar Shah
  6. Hafiz Khalil Ur Rehman s/o of Gohar Shah
- All R/O Qoum Mamozai, Tappa Abdur Raheem Khel, Sama Bazar Zargaran, Tehsil Upper, District Orakzai.***  
..... (Plaintiffs)

**VERSUS**

1. Muhammad Tayyab s/o Abdul Ghaffar
2. Muhammad Rauf s/o Lal Mir Shah
3. Ghazi Shah s/o Ghani Shah
4. Sifat Shah s/o Noor Badshah
5. ***All R/O Qoum Mamozai, Tappa Abdur Raheem Khel, Sama Bazar Zargaran, Tehsil Upper, District Orakzai.***  
..... (Defendants)

**SUIT FOR DECLARATION OF RIGHT OF EASEMENT  
OF PASSAGE OVER SUIT PROPERTY, AND  
CORRESPONDING MANDATORY INJUNCTIONS**

**JUDGEMENT:**

29.05.2025


This order is to decide instant suit filed by Mr. Naimat Ullah and five others, the plaintiffs, for declaration of their right of easement of passage over suit property, and corresponding mandatory injunctions against Mr. Muhammad Tayyab and 04 others, the defendants.

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Senior Civil Judge, JM  
Orakzai at Baber Mela

**Pleadings:**

The matter as recounted in the plaint reads that the house of the plaintiffs is situated at a distance of 100 metres from the road locally called Zargaran. Defendants, whose house falls between the road and plaintiffs' house, are attempting to block the access of the latter by raising a wall in the passage. Plaintiffs claim they are entitled to the easement of passage over the land of the defendants, and the latter cannot refuse them the right. It is further stated that on 16/03/2010, an agreement in respect of the passage was concluded between the sides. Plaintiffs complain of serious mental torture and practical inconvenience caused by the acts of the defendants.

The written statement of the defendants denies the claim, and rebuts the assertions of the plaintiffs. It argues that defendant no 04 had offered lodging to his sister, mother of plaintiff, who did not have a shelter at the time. Later on, she moved out with her family to their new house built around 40 years back. The written statement explains the agreement of 2010 was about passage to the mosque, not the house. It adds that 40 years ago the plaintiffs moved out to their new house, and have been living in Peshawar for the last 15 years. About the blockage of the access, the written statement contends that the wall has been raised inside the perimeter of the house of the



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defendants, and not as depicted by the plaintiffs i.e. in the middle of a passage. The written statement denies the assertion that the house is being used by the plaintiffs. It argues that they have been in Peshawar for the last few decades.

Differences in the pleadings of the parties were reduced into the following issues:

**Issues:**

1. Whether the suit is maintainable in its present form i.e joinder of parties, is free of fatal legal defects and if the forum is competent to try it?
2. Whether plaintiffs being owner of a land locked property adjacent to the defendants, are entitled to a right of easement of passage over the latter's property?
3. Relief.

Thereafter, both sides were invited to produce evidence to establish their respective positions.

**Witnesses/Exhibits:**

- i. Mr. Naimat Ullah, plaintiff No. 01 himself took the stand as PW-01, Mr. Noor Saleem, plaintiff No. 04 took the stand as PW-02, Mr. Noorbat Khan s/o Izat Khan, jirga member took the stand as PW-03, Ayub Khan s/o Abdul Jabbar, jirga member took the stand as PW-04, Fazal Gul s/o Mirza Gul took the stand as



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DW-01, Siyal Janan s/o Said Mir Ja as DW-02 and Muhammad Rauf, defendant No. 02 took the stand as Ex.DW-03. They have exhibited the following documents;

- ii. Copy of receipt regarding survey as Ex.PW-1/1.
- iii. Copy of Iqrar-nama dated: 01.05.2005 as Ex.PW-1/2.
- iv. Jirga deed dated: 16.03.2010 as Ex.PW-1/3.
- v. Sketch and photographs as Ex.PW-1/4.
- vi. Copy of CNIC of PW-01 as Ex.PW-1/5.
- vii. Copy of CNIC of PW-02 as Ex.PW-2/1.
- viii. Copy of CNIC of PW-04 as Ex.PW-4/1.
- ix. Copy of CNIC of DW-01 as Ex.DW-1/1.
- x. Copy of CNIC of DW-02 as Ex.DW-2/1.
- xi. Special Power of attorney of DW-01/ as Ex.DW-3/1.

**Reasoning:**

Issue wise findings of the court followed by a ruling on the suit is as follows:

**Issue No. 01.**

This issue poses the regular question about the validity of the legal form and frame of suit. They raise the

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questions of joinder of parties, limitation and other similar legal defects.

During the course of trial, the defense could not successfully establish the fact of the suit being hit by any of these legal bars and defects.

Throughout the course of trial, defendants did not mention any necessary party that might have been left out. The court could not find any fatal defect on that score. Declaration of a right is civil remedy for which the competent forum is a civil court. This issue is decided for the plaintiffs.

**Issue No 02:**

The plaintiffs have claimed that they own a house adjacent to the defendant's residence, and that the latter has begun to block their access by raising a wall in the only passage to it. Naturally, the onus to prove the assertion fell on the plaintiffs who claim entitlement to a right of easement.

In the following lines, the court shall first attempt to establish the factual position that could be reliably extracted from the evidence, and then it shall proceed to examine the legal aspect of the claim of the plaintiffs.

- Plaintiffs have claimed that they own the house to which their passage has been blocked, and that they

have in its continuous use and possession for decades. Defendants maintain that the residence was offered as temporary lodging to a sister until she could manage her own dwellings. Now, they allege, her sons have begun to lay claim to its title.

- The first piece of evidence of a fairly neutral origin is the survey conducted by the government to compensate persons who lost their homes in the fight against militancy. Plaintiffs claim that the survey registered them as entitled to the compensation for the now demolished building.
- It is commonplace knowledge and admitted by the plaintiff himself in the cross examination that the survey is meant for compensation for damage caused to buildings, and does not determine title over the land. Defense concedes that the structure on the land was raised by the plaintiffs, but the land was never theirs.
- The next key factor that sheds light on the contesting claims to the title of the house/land is its location. Plaintiff's witness no 02, also one of the plaintiffs, concedes in his cross-examination that the disputed piece of land/house is situated inside the

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circumference of the house of the defendants. Essentially, a place inside the house of the defendant is claimed as their entitlement by the plaintiffs.

- PW-02 further admits that the house(s) to which plaintiffs moved out from the disputed house were constructed 40 years back, and ever since have been living there. PW-04 maintains that as far back as his memory could recall, the plaintiffs have been living in their new houses.
- Essentially, plaintiffs on their own admit to having been living in Peshawar since 2008, and were made to concede in the cross examination that they have been living in their new houses, at a few hundred metres distance, for the last 40 years.
- Now we shall examine briefly the legal content of the claim: right of easement to the disputed house. Easement is a special right as it offers enjoyment of someone else's estate for the beneficial use of one's own land.
- From what has transpired so far, the plaintiffs have failed to establish their claim of entitlement to the disputed piece of land inside the house of the

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defendants. Further, they are claiming access to a disputed piece of land, which per their admissions, has been out of use for the last 40 years now.


- In these circumstances, the plaintiffs do not have the dominant heritage for which they might be considered entitled to the right of easement. Secondly, they have been out of use of the disputed land for the last 40 years, which disqualifies them for claiming easement to it.
- In view of the discussion above, the issue is decided against the plaintiffs, and in the negative.


**Issues no 03 (Relief):**

Issue no 02 encapsulated the principal claim and contention which, as discussed and decided above, went against the plaintiffs. The plaintiffs have failed to prove the cause of action they had disclosed in the plaint. The court do not find them entitled to any relief.

Case file be consigned to the record room after its necessary completion and compilation.

**Announced**  
29.05.2025

  
**IJAZ MAHSOOD**  
Senior Civil Judge, JM  
Orakzai at Baber Mela


  
**Ijaz Mahsood)**  
Senior Civil Judge,  
Orakzai (at Baber Mela)



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**CERTIFICATE**

Certified that this judgment of mine consists of nine (09) pages, each has been checked, corrected where necessary and signed by me.

  
(Ijaz Mahsood)  
Senior Civil Judge,  
Orakzai at (Baber Mela)

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